NO. 33704-5-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

80995-0

IN RE: THE PERSONAL RESTRAINT OF ROBERT BONDS

ROBERT BONDS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITIONER'S REPLY BRIEF

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A. ARGUMENT.

1. BECAUSE *CRAWFORD*[1] FUNDAMENTALLY ALTERED THE LANDSCAPE FOR EVALUATING CONFRONTATION CLAUSE ISSUES, THE ADMISSION OF TESTIMONIAL EVIDENCE USED TO CONVICT MR. BONDS VIOLATED THE CONFRONTATION CLAUSE

a. The *Crawford* decision requires a fundamental re-evaluation of the confrontation clause violation in the case at bar. Crawford and its progeny dictate a fundamentally different approach to issues involving the confrontation clause. Crawford unequivocally and without exception holds that the admission of "testimonial evidence" to prove the truth of the matter violates the Confrontation Clause of the Sixth Amendment unless the defendant has an opportunity for confrontation and cross-examination. 541 U.S. at 68. The Sixth Amendment "demands" confrontation of "testimonial evidence" admitted against a criminal defendant. Id.

The strong language used by the Crawford Court cannot be ignored. "[The Confrontation Clause] commands, not that the evidence be reliable, but that the reliability be assessed in a particular manner: by testing in the crucible of cross-examination."

Id. at 61. On the other hand, confrontation clause cases rooted on principles of fairness or reliability rely upon the "unpardonable vice" of permitting accusatory statements without requiring cross-examination. Id. at 63.

In the case at bar, the prosecution used police-generated statements by Spencer Miller and Tonya Wilson at Mr. Bonds' trial without affording Mr. Bonds confrontation or cross-examination. The prosecution asserts that since the jury was instructed that it should not use a co-defendant's statement against another person, the jury did not use these testimonial statements "against" Mr. Bond and thus the case escapes Sixth Amendment scrutiny. This argument fails because the statements were in fact used as evidence against Mr. Bonds, as exemplified by the prosecutor's closing argument to the jury. Reliance on this "unpardonable vice" violates the confrontation clause.

i. *Crawford* disavows the fairness rationales of *Bruton* and *Richardson*. Both Bruton v. United States, 391 U.S. 123, 129, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), and Richardson v. Marsh, 481 U.S. 200, 210-11, 107 S.Ct. 1702, 95 L.Ed.2d 176

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[1] Crawford v. Washington, 541 U.S. 36, 60-61, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

(1987), use the prism of reliability, efficiency, and fairness to analyze the confrontation issues arising when the prosecution introduces statements by a non-testifying co-defendant. The decisions rest upon "pragmatic" accommodations to the prosecution's interest in joint trials by trying to minimize the harmfulness of co-defendant's uncross-examined statements. Bruton, 391 U.S. at 129; Richardson, 481 U.S. at 210-11. Unlike Bruton and Richardson, Crawford disavows any diminishment in the right of confrontation predicated on the overall fairness of the proceedings. 541 U.S. at 61 (testing in "the crucible of cross-examination" is mandatory trial procedure); see United States v. Gonzalez-Lopez, __ U.S. __, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006) (under Crawford, Confrontation Clause mandates a particular form of testimony, i.e. cross-examined testimony).

The prosecution asserts that other jurisdictions confronted with similar claims have "resoundingly" rejected the idea that Crawford alters the analysis of co-defendant statements admitted at a joint trial without cross-examination. Resp. Brf. at 23-24. Yet as evidence of the "resounding" nature of the case law, the prosecution offers three seemingly insignificant decisions from other jurisdictions: two trial court opinions and one state-level

appellate court ruling.[2] The State's citations hardly amount to a "resounding" list of persuasive opinion from other authorities.[3]

The very limited number and quality of decisions from other jurisdictions listed in the prosecution's brief demonstrates that Crawford's impact on co-defendant statements simply has not been resolved, especially when the statements are used as accusatory evidence by the trial prosecutor. The prosecution also refers to State v. Vincent, 131 Wn.App. 147, 154-55, 120 P.3d 120, rev. denied, 149 P.3d 377 (2005), as evidence that Crawford has no impact on co-defendant statements, but Vincent does not discuss Crawford and in fact finds the prosecution violated Bruton by inadequately redacting a co-defendant's statements. The cases cited by the prosecution cannot be characterized as dispositive of the case at bar or even particularly helpful.

ii. *Crawford* dictates this court review the confrontation clause violation with renewed scrutiny. Under Bruton, the prosecution violates the confrontation clause by offering facially

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[2] The prosecutor cites: Pennsylvania v. Whitaker, 2005 PA Super 241, 878 A.2d 914 (2005); United States v. Le, 316 F.Supp.3d 330 (E.D. Va. 2004); Accord, McCoy v. United States, 890 A.2d 204 (D.C. 2006).

incriminatory statements by a non-testifying co-defendant, even with clear and repeated limiting instructions by the court. 391 U.S. at 129. Under Richardson, the prosecution violates the confrontation clause by either (1) inadequately redacting a non-testifying co-defendant's statements such that the statement incriminates the defendant when considered in conjunction with other evidence, or (2) arguing by inference or expressly stating that the co-defendant's statements constitute evidence against the accused. 481 U.S. at 211; see also Gray v. Maryland, 523 U.S. 185, 196, 140 L.Ed.2d 294 (1998) (redaction inadequate if "inevitably" incriminates defendant).

Here, the prosecution introduced Spencer Miller's facially incriminatory statement that "Bobby" participated in the "fuck Hilltop" exchange. 3/26/02RP 2403. Even if Mr. Miller's diction and use of "he" leaves one pausing to parse to which "he" he refers, this statement appears to refer to Robert Bonds, the only possible "Bobby" and the brother of "my homeboy," not to some unidentified

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[3] As an example of authority contrary to the prosecution's list of "resounding authority, in Trevino v. State, 2007 Texas App. LEXIS 1216 (published, 2/15/2007), the court ruled that Crawford, "broadened" Bruton by finding that testimonial hearsay necessarily violates the confrontation clause).

brother of Daron Edwards, as the prosecutor asserts. 3/26/02RP 2403.

Likewise, Mr. Miller's statement that he disposed of several "guns" after the incident facially incriminates the other person who was accused of using a gun during the incident alongside Mr. Miller, which was Mr. Bonds. See Vincent, 131 Wn.App. at 154 (reference to unnamed person's involvement in crime violates Sixth Amendment when it does not "prevent the jury from concluding the redacted reference is obviously to the codefendant . . . .").

More significantly, the prosecution's reliance on Mr. Miller and Ms. Wilson's statements to urge the jury to convict all defendants, including Mr. Bonds, undermines any claim that the uncross-examined statements were not "testimonial" or accusatory as they were used in the case.

iii. The uncross-examined evidence used against Mr. Bonds is a plain violation of the confrontation clause. Not once in the course of his argument to the jury did the trial prosecutor remind the jury of the limited admissibility of co-defendants Miller and Wilson's detailed statements about the incident. On the contrary, when referring to the evidence the jury could consider, the prosecutor told them to look "at the evidence as

a whole," and expressly referred to the testimonial statements by the co-defendants in getting "an overall picture of events." 4/2/02RP 2981.

Under Crawford, the use of testimonial statements without cross-examination violates the confrontation clause. The reviewing court does not pause to consider whether the accusatory statements were generally fair or based on reliable evidence.

Here, the prosecutor urged the jury to "look at the evidence as a whole," including the co-defendants' statements. 4/2/02RP 2981. He made numerous references to the uncross-examined statements as evidence that demonstrated Mr. Bonds' guilt. For example, the prosecutor used Mr. Miller's statement explaining how upset he was at Mr. Edwards as evidence of Mr. Bonds' emotions that night. 4/2/02RP 2798-99 (arguing Mr. Miller admitted he was upset and Mr. Bonds would feel same way). The prosecutor used Ms. Wilson's admissions about calling Andre to the scene as evidence Mr. Bonds orchestrated the confrontation along with Ms. Wilson. 4/3/02RP 3148. The prosecutor emphasized Mr. Miller told Detective Ringer "what happened to the guns afterwards, and it was plural, guns. The guns went to Seattle," to imply Mr. Miller

took care of the "plural" guns used by himself and Mr. Bonds. 4/3/02RP 3154.

Because the co-defendant statements were used as evidence to incriminate Mr. Bonds, as shown by the prosecutor's closing argument, the testimonial use of these statements violated Mr. Bonds' right to confront witnesses against him.

b. Constitutional violation may be raised on appeal. The prosecutor argues Mr. Bonds waived the confrontation clause violation in the statements because Mr. Bonds raised no objection below. Resp. Brf. at 19. The violation of the Sixth Amendment is an issue that may be raised for the first time on appeal. State v. Rohrich, 132 Wn.2d 472, 476, 939 P.2d 697 (1997). But for appellate counsel's deficient performance, this issue would have been raised on direct appeal.

c. The prosecutor's harmless error analysis distorts and misrepresents the evidence against Mr. Bonds. The prosecutor's rose-colored recitation of the evidence simply ignores the many credibility issues and inconsistencies acknowledged even by the trial prosecutor and apparent from reviewing the record. See e.g., 4/2/02RP 2983, 2990; 2992; 4/2/02RP 3004 (prosecutor's

closing argument admitting lies by its witnesses and saying State's witnesses mostly stayed "close" to the truth).

The allegations in the case at bar arose in the context of a dispute between two strongly divided, tough-minded, and gun-toting groups: those who called Keith Harrell and Daron Edwards "family" despite the lack of actual blood relationship and those closely affiliated with Andre Bonds.

Ray Sinclair, who the prosecutor now describes as a "compelling witness" for no apparent reason other than he offered testimony the prosecutor now relies upon, was Daron Edwards' long-time best friend and saw him "like a brother." Resp. Brf. at 39; 3/25/02 RP 2204. The "compellingness" of Mr. Sinclair's testimony must be evaluated in view of the fact that his testimony was contradicted or unsupported by other witnesses and his bias is plain.

Mr. Sinclair complained that the lead police detective mistakenly excluded his most incriminating allegations from his written report, as the detective had no notes that Mr. Sinclair claimed he saw Mr. Bonds with a gun or that Mr. Bonds participated in the fight at Browne's. 3/25/02RP 2269, 2274. Despite seeing his best friend shot, Mr. Sinclair spoke to the police

only 10 days after the incident, in a meeting arranged by Mr. Edwards, at Mr. Edwards' home, while Mr. Edwards waited nearby with Mr. Harrell and the rest of the "family." Id. at 2257-58.

Additionally, the two close "relations" of Mr. Edwards who claimed Mr. Bonds had a gun at Browne's bar before the shooting incident contradicted each other as to when this occurred. 3/14/02 1099-1101, 1172 (Sabrina Stark claims Mr. Bonds had gun after fight outside Browne's, while she escorted Mr. Edwards to his car); 3/25/02RP 2213-16, 2256 (Mr. Sinclair claims Mr. Bonds was not present after the fight and displayed gun before fight).

Moreover, during the incident, gunfire erupted from "everywhere, literally everywhere." 3/12/02RP 759. It is unreasonable to assume any juror would necessarily rely upon any one witness given the rash of conflicting and incomplete accounts by the witnesses who each had various self-interests. Whether Mr. Bonds participated in shooting a gun is unsupported by any neutral witness and only by a few non-neutral witnesses whose testimony smack of self-interest or revenge.

As explained in Petitioner's Opening Brief, the case against Mr. Bonds was not strong. By using Mr. Miller and Ms. Wilson's statements to the police as evidence of Mr. Bonds' involvement,

the prosecutor told the jury to ignore the instruction that one co-defendant's statement should not be used against another. Based on the prosecutor's encouragement, jurors would certainly use Mr. Miller and Ms. Wilson's admission of involvement as evidence Mr. Bonds participated, arranged, and in fact used a gun during the incident. The jury certainly relied upon the co-defendant's testimony to put aside the plainly ambiguous and uncertain evidence contained in the inconsistent and credibility-challenged case. The State's prejudicial use of the uncrossexamined statements render the verdicts manifestly unfair.

2. THE VIOLATION OF MR. BONDS'S RIGHT TO A PUBLIC TRIAL REQUIRES REVERSAL OF HIS CONVICTIONS

a. The prosecutor waives the right to argue the public trial violation. On page 49 of the prosecutor's brief, the prosecutor "reserves the right to respond to the merits" of Mr. Bonds' claim that he was denied his right to a public trial. Resp. Brf. at 49.

Perhaps the prosecutor "reserves" rather than substantively responds to Mr. Bonds' petition to circumvent the 50-page limit of a response brief. RAP 10.4(4). Perhaps the prosecutor thinks it would be unseemly, or unethical, to so strongly oppose Mr. Bonds'

efforts to seek relief for the violation of his right to a public trial when in a substantive brief the State would have to acknowledge the clarity of the case law demonstrating that Mr. Bonds is entitled to a new trial, and thus the prosecution simply decides to "reserve" its comments on this issue.

In any event, it remains a mystery as to what further briefing the prosecutor has the opportunity to provide. The prosecutor has already filed an objection, a motion to modify, and a motion for discretionary review asking the court to deny Mr. Bonds the opportunity to include this issue in his petition. This Court and the Supreme Court have denied the State's efforts to strike this issue from the petition.

Because this Court has already ruled that Mr. Bond may amend his petition to add this issue, the prosecutor's refusal to respond to the merits of the issue must be taken as a waiver of any further argument.

b. This Court has already considered the State's arguments and found Mr. Bonds may raise the violation of his right to a public trial in the instant petition. The prosecutor seeks to relitigate this Court's fully-informed and considered ruling that Mr. Bonds may amend his petition to add the issue that he was denied

his right to a public trial. The prosecution raises the same arguments this Court has already considered and rejected.

First, as the prosecution argued in its earlier motions, it asserts this Court has not screened Mr. Bonds' amended issue for frivolity. The prosecutor's failure to offer one reason why the added issue is frivolous demonstrates the specious nature of this claim. The deprivation of Mr. Bonds' right to a public trial is plain on its face and its merit is obvious. By granting Mr. Bonds' motion to amend the petition, this Court recognized that the additional issue is not frivolous.

Secondly, since this Court has considered the same arguments raised by the prosecution and rejected them, there is no reason to revisit the prior rulings permitting Mr. Bonds to amend his petition. The Supreme Court Commissioner's ruling denying the prosecution's motion for discretionary review does not alter the result. Notably, even though the Commissioner expressly ruled that the prosecutor could seek further discretionary review by asking the Supreme Court justices to decide whether the decision granting the motion to amend the petition, the prosecutor declined to seek any such review. The failure to seek further review illustrates the precarious nature of the State's claim.

Moreover, the Commissioner's Ruling does not substantively dispose of the issue. The ruling denying discretionary review sets forth some general legal principles explaining the grounds for equitably extending statutes of limitations but does not substitute for this Court's determination to permit Mr. Bond to amend the petition. A determination of equitable tolling rests upon a court's "balance [of[the equities." Douchette v. Bethel School District, 117 Wn.2d 805, 812, 818 P.2d 1362 (1991).

Under the doctrine of equitable tolling, a court can extend the time for filing court pleadings when it would be inequitable to hold the party to statutory time limit requirements. State v. Littlefair, 112 Wn.App. 749, 758, 51 P.3d 116 (2002), rev. denied, 149 Wn.2d 1020 (2003). "Equitable tolling permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed." State v. Duvall, 86 Wn.App. 871, 874, 940 P.2d 671 (1997), rev. denied, 134 Wn.2d 1012 (1998).

A number of decisions by the Court of Appeals apply the doctrine of equitable tolling to the statute of limitations in criminal matters, including the precise context of the case at bar, to extend the one-year requirement of RCW 10.73.090. See Littlefair, 112

Wn.App. at 757-58 (extending RCW 10.73.090 deadline for two years under equitable tolling doctrine); In re Personal Restraint of Hoisington, 99 Wn.App. 423, 430-31, 993 P.2d 296 (2000) (applying equitable tolling to extend deadline in RCW 10.73.090); see also State v. Robinson, 104 Wn.App. 657, 667, 17 P.3d 653, rev. denied, 145 Wn.2d 1002 (2001) (recognizing availability of equitable tolling of RCW 10.73.090 but declining to toll in that case); Duvall, 86 Wn.App. at 874 (applying equitable tolling to statutory time limit for imposing restitution in criminal case).

Federal courts similarly apply the doctrine of equitable tolling in the context of habeas proceedings. See United States v. Bendolph, 409 F.3d 155 (3rd Cir. 2005), cert. denied, 126 S.Ct. 1908 (2006) ("all of the parties and both *amici* agree that . . . the [habeas] limitations period is not jurisdictional and therefore is subject to equitable considerations such as waiver."); Miller v. New Jersey State Dept. of Corrections, 145 F.3d 616, 617 (3rd Cir. 1998) ("Time limitations analogous to a statute of limitations are subject to equitable modifications such as tolling."); Hoisington, 99 Wn.App. at 431 (discussing use of equitable tolling in federal courts).

A statute of limitations "is subject to principles of waiver and estoppel, including the doctrine of equitable tolling." Duvall, 86

Wn.App. at 874. Courts apply the doctrine of equitable tolling when the party seeking tolling acted with reasonable diligence and the court or another party acted or failed to act in accordance with its general obligations. Duvall, 86 Wn.App. at 875; see Douchette, 117 Wn.2d at 811 (listing factors to consider in determining equitable tolling in employment discrimination context). Courts apply the doctrine sparingly, and not as a remedy for "a garden variety claim of excusable neglect." Id. at 874. An act or omission by the court may justify equitable tolling. Hoisington, 99 Wn.App. at 431-32.

Ultimately, equitable tolling rests upon the court's "'balance [of] the equities' between the parties, taking into consideration the relief sought by the plaintiff and the hardship imposed on the defendant." Douchette, 117 Wn.2d at 812. The court may look to the policies underlying the statutory relief sought and the purposes of the statute of limitations. Id. The court also considers whether the opposing party or court bears fault in the need for an extension. Id. at 811-12.

The prosecution here presents only the purposes of the statute of limitations, without weighing the relief sought or offering prejudice the prosecution suffers by a short extension of the one-

year time limit. Resp. Brf. at 45. While the statute of limitations represents an interest in finality, the policy underlying the right to collaterally attack a criminal conviction and promptly receive the appointment of counsel upon presenting a nonfrivolous issue is to insure that a criminal conviction and sentence is lawful and constitutional. Mr. Bonds has presented several reasons why his conviction was unlawful and his appellate counsel woefully deficient. The prosecution suffers no notable prejudice, as Mr. Bonds filed a timely personal restraint petition, it has a full opportunity to present briefing, and in the event this Court orders a new trial, the amended issue does not impact the prosecution's ability to prepare for such a trial. Policy interests also favor the court's liberal and fair resolution of substantive issues. See RAP 1.2 (a);[4] RAP 1.2(c).[5] Moreover, the length of the extension is minimal, and had counsel been appointed in a prompt fashion as

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[4] RAP 1.2 (a) provides:
These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

[5] RAP 1.2 (c) provides:
The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

required by statute and court rule, the petition would have been amended well within the one-year time period.

The prosecution primarily relies on In re Personal Restraint of Benn, 134 Wn.2d 868, 952 P.2d 116 (1998), reversed sub. nom Benn v. Lambert, 283 F.3d 1040 (9th Cir. 2002), cert. denied, 537 U.S. 942 (2002), to argue that a personal restraint petition may never be amended. Yet in Benn, the doctrine of equitable tolling was never raised and likely for good reason, as Benn did not seemingly have equitable grounds for claiming relief.[6] In fact, the three years Benn waited to add an issue would be hard to excuse under principles of equity.

Here, this Court was free to decide that Mr. Bonds merited a short extension, since he had been diligent in filing his personal restraint petition in a timely fashion. He filed his personal restraint petition less than three months after the mandate was issued and

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[6] In Benn, a death penalty case, the court appointed counsel to represent Benn in his personal restraint petition immediately after his direct appeal ended. 134 Wn.2d at 880. Counsel filed a personal restraint petition raising several new issues, the Supreme Court considered the case and remanded for a reference hearing on a specific issue. Id. at 880 n.1, 882. After the remand, Benn tried to add a new issue unrelated to the reason the case was remanded. The Benn Court noted that Benn waited more than three years after the expiration of the time period for filing a PRP to amend his petition, he had counsel throughout this time period, and the issue was one that should have been reasonably available to him earlier. 134 Wn.2d at 938.

properly complied with the procedural rules, including requesting assistance of counsel.

This Court delayed appointing counsel or ruling on the frivolity of the petition for an extremely long time, which unfairly left Mr. Bonds in a holding pattern unsure of whether his petition would be accepted while the one-year time line ticked away. Ten months passed between when Mr. Bonds filed his PRP and this Court's ruled it was not frivolous and appointing counsel. There is no apparent reason for this extreme delay, and certainly no fault attributed to Mr. Bonds.

RAP 16.11 directs the Court of Appeals to "promptly" review the timely filed petition and appoint counsel. RCW 10.73.150(4) likewise requires the Court to appoint counsel under the provisions of RAP 16.11, and thus requires prompt action by the Court. The Court's ten-month delay is an unusual departure from the required prompt action that justifies an equitable extension of the one-year PRP deadline.

Judges from this Court are expected and authorized to exercise discretion when determining whether principles of fairness

and equity allow the extension of a statute of limitations when the Court delayed acting on a timely filed petition for a lengthy period of time. See State v. Grayson, 154 Wn.2d 333, 339, 111 P.3d 1183 (2005) (describing judge's discretionary role in decision-making).

The prosecution also cites State v. Wade, 133 Wn.App. 855, 138 P.3d 168 (2000), for the proposition that a person may not use a claim of ineffective assistance of counsel to circumvent court rules or statutory time bars. However, the prosecution misrepresents Wade. Wade holds that a person may indeed seek relief based on ineffective assistance of appellate counsel. Id. at 867-68 ("If Wade is to obtain relief, he must do so through a claim of ineffective assistance of appellate counsel."). While ineffective assistance of appellate counsel may not be an enumerated ground for extending the time period of RCW 10.73.090, it certainly may be considered by the Court of Appeals in exercising its equity authority and may factor into the court's decision to accept an amended petition in the interest of justice.

In sum, Mr. Bonds sought permission to amend his personal restraint petition less than three months after the one-year time limit for filing a personal restraint petition expired. The amended issue involves numerous violations of Mr. Bonds' right to a public

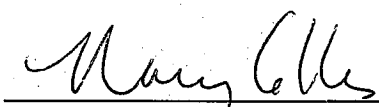
trial, which is an error requiring *per se* reversal, even when raised for the first time in a personal restraint petition. Both a Commissioner from this Court and a panel of judges from this Court granted Mr. Bonds' motion to amend the petition despite the State's objection. This Court's rulings granting and upholding the ruling allowing amendment of the petition are reasonable and in keeping with well-established principles of equitable estoppel. The prosecution's refusal to substantively address the public trial violation must be taken as a concession that this fundamental constitutional error occurred in Mr. Bonds' trial and reversal is required due to this fundamental error. Since the delay in Mr. Bonds' personal restraint petition is delay largely attributed to the Court's failure to promptly review the petition and appoint counsel as required by statute and court rule, it is not only appropriate but fair and just to allow him to amend his personal restraint petition as this Court has already ruled he may do. Hoisington, 99 Wn.App. at 432.

B. CONCLUSION.

For the foregoing reasons and those presented in Petitioner's Opening Brief, Robert Bonds asks this Court to reverse his convictions and sentence.

DATED this 28th day of March 2007.

Respectfully submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

IN RE THE P.R.P. OF ROBERT BONDS STATE OF WASHINGTON, RESPONDENT, v. ROBERT BONDS, PETITIONER.	)	COA NO. 33704-5-II

DECLARATION OF SERVICE

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 28TH DAY OF MARCH, 2007, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITIONER'S REPLY BRIEF** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF MARCH, 2007.

X_____